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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 135

FREDERICK WALZ,

Appellant,

—v.—

TAX COMMISSION OF THE CITY OF NEW YORK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

BRIEF FOR APPELLANT

FREDERICK WALZ
Appellant pro se
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The opinion of the New York Court of Appeals is reported in 24 N. Y. 2d 30, and its text is set forth in Appendix B of the Jurisdictional Statement. The Appellate Division decision is officially reported in 30 A. D. 2d 778, and the text of the order of affirmance is set forth in Appendix C (p. 6a) of the Jurisdictional Statement. The memorandum opinion of the Special Term of the Supreme Court is not officially reported and is as follows:

> Upon the foregoing papers this motion by plaintiff for summary judgment against respondent Tax Commission is denied; cross-motion for summary judgment dismissing the complaint is granted. Though the pro-

cedure used by plaintiff is technically infirm, decision is on the merits. Plaintiff, an owner of property, sues to restrain defendant's grant of tax exemption to religious organizations (Sec. 420, R. P. Tax L.) as in contravention of the first and fourteenth amendments of the Constitution of the United States. No allegation is made that defendant proceeded otherwise than pursuant to law; rather, it is the law itself which is under attack. Such exemptions are granted in pursuance of long-standing, public policy of this State, under a statute which is presumptively constitutional, and which is hereby sustained.

Dated: March 5, 1968.

ARTHUR MARKEWICH
J.S.C.

Jurisdiction

This appeal is from the order of the Court of Appeals of the State of New York, dated February 20, 1969, affirming an order of the Appellate Division of the Supreme Court of the State. Notice of Appeal to the Supreme Court of the United States was filed with the Supreme Court of New York on April 4, 1969. The Jurisdictional Statement was filed May 20, 1969 and probable jurisdiction was noted on June 16, 1969. Jurisdiction on appeal is conferred by 28 U. S. C. Sec. 1257(2).

Statutes Involved

Sec. 420, Subdiv. 1, of the Real Property Tax Law provides in part as follows:

> "Real property owned by a corporation or association organized exclusively for the moral or mental improvement of men and women, or for religious, bible, tracted, charitable, benevolent, missionary, hospital, infirmary, educational, public playgrounds, scientific, literary, bar association, library, patriotic, historical or cemetery purposes . . . and used exclusively for carrying out thereupon one or more of such purposes . . . shall be exempt from taxation as provided in this section" (Appendix p. 20).

Article 16, Sec. 1 of the New York State Constitution provides in part as follows:

> "Exemption from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit" (Appendix p. 20).

Question Presented

Did the Court of Appeals err in holding that the real property tax exemption of religious organizations in New York City is not in violation of the First and Fourteenth Amendments of the federal Constitution?

Statement of the Case

The action was commenced on June 15, 1967, by the service of a summons and verified complaint upon the Tax Commission of the City of New York (Appendix pp. 3-7). The defendant served a verified answer containing three separate and distinct defenses on June 28, 1967 (Appendix pp. 8-10). Thereafter appellant moved under CPLR Secs. 3212-13 for an order striking out defendant's answer and directing the entry of summary judgment for appellant upon the cause of action set forth in the complaint (Appendix pp. 11-16). The appellee opposed the motion and under CPLR Sec. 3211, also requested summary judgment dismissing the complaint (Appendix pp. 17-21). Appellant submitted an affidavit in reply (Appendix pp. 22-23). The Special Term of the Supreme Court denied the appellant's motion for summary judgment and granted the appellee's cross-motion for summary judgment dismissing the complaint. The opinion is set forth on pp. 1-2 hereof.

The Appellate Division unanimously affirmed, without opinion (Appendix p. 30). Upon appeal by appellant to the Court of Appeals of the State of New York, that Court affirmed unanimously, with all but one judge concurring in a per curiam opinion (Appendix pp. 35-39).

In essence, the pleadings relate that appellant is a citizen of the United States and the owner in fee of real property located in the County of Richmond in New York City, designated on the Tax Map as Section 1, Block 198, Lot 210 (10). His complaint is that he is a Christian and not a member of any religious organization; that the tax exemption granted to religious corporations for the tax year

commencing July 1, 1967 "constitutes an involuntary payment by plaintiff to the aforementioned religious organizations in violation of plaintiff's religious freedom" and that said tax exemptions are in violation of the First and Fourteenth Amendments of the federal Constitution.

The Tax Commission answered that the taxable status of real property owned by religious corporations was determined in accordance with the law appertaining thereto and that the appellant was neither aggrieved thereby nor deprived of any rights sufficient to constitute a cause of action (Appendix pp. 5-10).

ARGUMENT

Tax exemptions for property of religious organizations violate the First and Fourteenth Amendments of the United States Constitution.

The only cases cited by the New York Courts in the instant case were by the Court of Appeals. None is squarely in point and each is distinguishable as follows:

People v. *Haring; People* v. *Feitner; Trustees* v. *State of Iowa* and *M. E. Church* v. *Hinton*—all make no reference to the federal Constitution.

Garrett v. *Elmhurst* and *Lundberg* v. *Co. of Alameda* —in both cases the tax exemption benefited the public purpose of education.

General Finance Corp. v. *Archetto*—plaintiff was a "soulless" corporation.

Murray v. *Comptroller*—corporate plaintiff was entitled to the tax exemption of which it complained and the co-plaintiffs were natural persons professing atheism.

Abington v. *Schempp* and *Engel* v. *Vitale*—were "public school compulsory religious service" cases; in the first a single concurring opinion expressed the idea that religious organization tax exemption was constitutional and in the second a footnote to a single concurring opinion suggested the opposite.

In the trial court appellant cited *Everson* (Appendix p. 23) and again in both appellate courts.

The following quotations are from the opinion of this Court in *Everson* v. *The Board of Education,* 330 U. S.:

Page 11, with reference to the adoption of the First Amendment,

"The people . . . reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support or otherwise to assist any or all religions. . . ."

Page 8:

"The First Amendment was made applicable to the states by the Fourteenth" (*Murdock* v. *Pennsylvania,* 319 U. S. 105).

Pages 15-16:

"The 'establishment of religion' clause of the First Amendment means at least this: neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another . . . No tax in any amount, large or small, can be levied to support

any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion . . . New Jersey cannot consistently with the 'establishment of religion' clause of the First Amendment contribute tax-raised funds to the support of an institution which teaches the tenets and faith of any church."

The dissent of four justices in the *Everson* case is quoted from in part, as follows:

Pages 31-2:

The First Amendment's object was "to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding any form of public aid or support for religion."

Page 33:

"The prohibition broadly forbids state support, financial or otherwise, of religion in any guise, form or degree. It outlaws all use of public funds for religious purposes."

Page 40, referring to Madison:

"In no phase was he more unrelentingly absolute than in opposing state support or aid by taxation. Not even 'three pence' contribution was thus to be exacted from any citizen for such a purpose."

Pages 52-3:

"Legislators are free to make, and courts to sustain appropriations only when it can be found that in fact

> they do not aid, promote, encourage or sustain religious teaching or observances, be the amount large or small. . . . The great condition of religious liberty is that it be maintained free from sustenance, as also from other interference, by the state."

In *McGowan* v. *Maryland,* 366 U. S. 442:

> "It (this Court) has found that the First and Fourteenth Amendments afford protection against religious establishments far more extensive than merely to forbid a national or state church."

The Court then referred to the "establishment of religion" definition in *Everson* (330 U. S. 15-16).

This opinion was reaffirmed in *Torcasso* v. *Watkins,* 367 U. S. 492, 493; in *McCollum* v. *Board of Education,* 333 U. S. 203 and in *Abington* v. *Schempp,* 374 U. S. 217. In *Abington* the concurring opinion of Douglas, *J.,* included:

> "The most effective way to establish any institution is to finance it" (p. 229).

CONCLUSION

The order of the Court of Appeals of the State of New York should be reversed.

June 21, 1969.

Respectfully submitted,

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Appellant pro se